

REMARKS

This application is amended in a manner to place the claims directed to the elected subject matter in condition for allowance at the time of the next Official Action.

Claims 10 is amended.

Claim 38 is new, and is directed to related subject matter as examined in claims 10-13, 15-18 and 20-31. Claim 38 is directed to a method of treatment which utilizes the formulation obtained by the method of independent claim 10. Thus, consideration and examination of this claim is respectfully requested.

Support for claims 10 and 38 may be found, for example, in compositions A and A' described on page 16, which comprise a mixture of compounds according to formula (I) where each the compounds have one of glycine, alanine, glutamic acid and aspartic acid as the characterizing chain. The results of administering the compositions are discussed generally throughout pages 17-31. Support for the new claim may also be found at page 8, lines 12 and 25 to 29 combined with page 9, lines 1 and 2.

Claims 10-38 remain pending in the application.

Claims 14, 19, and 32-37 are withdrawn as being directed to non-elected subject matter.

Claims 10-13, 15-18 and 20-31 are rejected under 35 USC §112, second paragraph for being indefinite. This rejection is respectfully traversed.

The position of the Official Action is that "the claim does not set forth any steps involved in the method/process". The Official Action proceeds to state "[a] claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced."

To the contrary, claim 10 recites an active step: "adding a composition" in line 5 of the claim.

The Official Action also argues that "it seems that the preamble of the claim is complete" and that the previously filed amendment makes the claim unclear.

However, in light of the present specification at page 1, line 7-25, claim 10 is definite.

The claimed method is directed to utilizing a particular composition in a formulation. The composition is utilized as a slimming agent. That is, the composition has lypolytic activity, or the ability to reduce triglyceride content in adipocyte cells. The formulation contains a cosmetically acceptable medium. The recited active step is directed to adding the composition to the formulation so that lypolytic activity is provided to the formulation, i.e., the composition is utilized as a slimming agent that provides this lypolytic activity in the formulation.

Therefore, withdrawal of the rejection is respectfully requested.

Claims 10-13, 15-18 and 20-31 are rejected under 35 USC §101 for not setting forth any steps in the recited method. This rejection is respectfully traversed.

For the reasons discussed above with respect to the indefiniteness rejection, claim 10 recites an active step that is consistent with the method described by the preamble of claim 10. The claimed invention has utility, as further evidenced by the present specification page 1, line 7-25 and the discussion of compositions A and A' beginning at specification page 16.

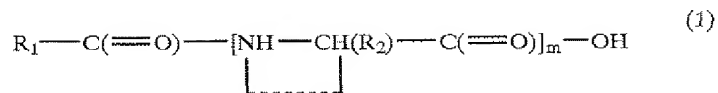
Therefore, withdrawal of this rejection is respectfully requested.

Claims 10-13, 15-18 and 20-31 are rejected under 35 USC §102(b) as being anticipated by STOLTZ US 6,296,859 B1 (STOLTZ). This rejection is respectfully traversed.

STOLTZ is offered for teaching a synergistic composition comprising a compound of lipoamino acid structure and a water lily extract. The compound may include various amino acids as the characterizing chain, and at least one compound may be added to the composition.

However, STOLTZ does not disclose a specific mixture of compounds as claimed. That is, STOLTZ does not disclose a composition with sufficient specificity for the holding of anticipation.

The claimed method adds a mixture of compounds to a formulation, each compound represented by formula (I):



where  $R_1$  comprises at least one a linear, branched, saturated or unsaturated aliphatic hydrocarbon radical comprising 11 carbon atoms,  $R_2$  is one of glycine, alanine, glutamic acid and aspartic acid as a characterizing chain for each compound, and  $m$  is from about 1 to about 50.

In the formula of STOLTZ, however, a substituent group similar to  $R_1$  may include 3-30 atoms, a substituent group similar to  $R_2$  is an amino acid chain, and a similar term  $m$  is from 1 to 5. Indeed, the formulation examples of STOLTZ do not include a mixture of compounds according to independent claim 10, in particular, where  $R_1$  comprises 11 atoms and  $R_2$  is one of glycine, alanine, glutamic acid and aspartic acid as a characterizing chain for each compound.

Accordingly, to even approach the claimed invention one would have been forced to pick and choose a combination of compounds with specific values of, for example  $R_1$  and  $R_2$ , absent any guidance from STOLTZ.

Thus, as such "picking and choosing" is not appropriate for the finding of anticipation, STOLTZ cannot anticipate independent claim 10, nor claims depending from claim 10.

Therefore withdrawal of the rejection is respectfully requested.

STOLTZ also does not render obvious the claimed invention.

The claimed invention is directed to a particular mixture of compounds. For example, such a mixture is illustrated by compositions A and A' in the present specification at page 16: lauroylglutamic acid, lauroylaspartic acid, lauroylglycine acid, and lauroyl alanine acid. As discussed on specification page 17, the claimed compositions act on lipolysis with a multiplication factor greater than the slimming compounds of the prior art (e.g., caffeine), and at a lower concentration than the prior art. Thus, the claimed composition of the mixture of compounds provides an unexpected increase in activity at a lower amount.

STOLTZ, however, does not recognize this type of activity from the claimed combination of compounds in a composition.

Therefore, STOLTZ cannot render obvious the claimed invention.

As to new claim 38, this claim is neither anticipated nor rendered obvious by STOLTZ. Claim 38 is directed to a method of reducing triglyceride content in human adipocyte cells, which includes the administration of a formulation having an effective amount of the mixture of compounds recited in claim 10. As STOLTZ does recognize the claimed mixture of compounds, for the

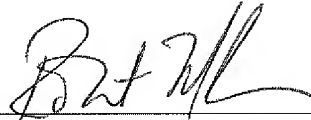
reasons discussed above relative to claim 10, STOLTZ cannot anticipate nor render obvious the method of administering such a mixture.

Therefore, in view of the amendment to the claims and the foregoing remarks, the claims directed to the elected subject matter, as well as new claim 38, are in condition for allowance at the time of the next Official Action. Allowance and passage to issue on that basis is respectfully requested.

The Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 25-0120 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17.

Respectfully submitted,

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